

EXHIBIT 5

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SONOS, INC.,

Plaintiff,

vs.

Case No. 3:21-CV-07559-WHA

GOOGLE LLC,

Defendant.

-AND-

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GOOGLE LLC,

Plaintiff,

vs.

Case No. 3:20-CV-06754-WHA

SONOS, INC.,

Defendant.

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SOURCE CODE

REMOTE VIDEOTAPED DEPOSITION BY VIRTUAL ZOOM OF

DAN SCHONFELD, PH.D.

Friday, February 3, 2023

Reported By: Lynne Ledanois, CSR 6811

Job No. 5698162

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<p>1 I don't recall. 6:25AM</p> <p>2 Q Was it more than \$100,000?</p> <p>3 A I'm pretty sure the answer is yes, but I</p> <p>4 really have no clear idea of the actual amount.</p> <p>5 Q Do you know if it's more than \$500,000? 6:26AM</p> <p>6 A It's not more than 500.</p> <p>7 Q So somewhere in between 100,000 and</p> <p>8 500,000?</p> <p>9 A No.</p> <p>10 Q No, not between there? 6:26AM</p> <p>11 A Not in that range. It's somewhere probably</p> <p>12 higher than 100,00, but I would venture to say most</p> <p>13 likely much closer to 100,00 than to anything close to</p> <p>14 500,000.</p> <p>15 As I said, I have really no recollection. 6:26AM</p> <p>16 I didn't go back and double check that at this</p> <p>17 point. And we're talking about a range of over two</p> <p>18 years, so I really don't have any clear idea.</p> <p>19 Q Now, if you can look in the shared exhibit</p> <p>20 folder, do you see the three exhibits that I have 6:27AM</p> <p>21 added there?</p> <p>22 A I do.</p> <p>23 Q Okay. So let's start with Exhibit 1350.</p> <p>24 (Whereupon, Exhibit 1350 was marked for</p> <p>25 identification.) 6:27AM</p> <p style="text-align: right;">Page 10</p>	<p>1 accurate copy of your rebuttal expert report dated 6:29AM</p> <p>2 January 13, 2023?</p> <p>3 A With the same understanding that it refers</p> <p>4 to the body of the report, not to the entire reports</p> <p>5 with the same caveats that I mentioned for the 6:29AM</p> <p>6 previous report.</p> <p>7 Q Are you aware of any errors in your</p> <p>8 rebuttal expert report?</p> <p>9 A It's the same response I just gave for the</p> <p>10 previous one. I'm not aware of any specific errors at 6:29AM</p> <p>11 the moment.</p> <p>12 Q If you could open up the next exhibit,</p> <p>13 which is Exhibit 1352.</p> <p>14 (Whereupon, Exhibit 1352 was marked for</p> <p>15 identification.) 6:29AM</p> <p>16 BY MR. SMITH:</p> <p>17 Q Let me know when you have that open.</p> <p>18 A I do have that open.</p> <p>19 Q Does this appear to be a complete and</p> <p>20 accurate copy of your reply expert report dated 6:30AM</p> <p>21 January 23rd, 2023?</p> <p>22 A With the same caveat that I mentioned for</p> <p>23 the previous report, that it includes the body of my</p> <p>24 report but not the exhibits and demonstratives, et</p> <p>25 cetera. 6:30AM</p> <p style="text-align: right;">Page 12</p>
<p>1 BY MR. SMITH: 6:27AM</p> <p>2 Q If you could just open that up and let me</p> <p>3 know once you have it open.</p> <p>4 A I do have it open.</p> <p>5 Q Okay. And does this appear to be a 6:27AM</p> <p>6 complete and accurate copy of your opening expert</p> <p>7 report dated November 30th, 2022?</p> <p>8 A What date did you say?</p> <p>9 Q November 30th, 2022.</p> <p>10 A It's the body of the report. I don't think 6:28AM</p> <p>11 it's everything in the report including the appendices</p> <p>12 and exhibits and demonstratives. But it's the body of</p> <p>13 the report.</p> <p>14 Q And are you aware of any errors in your</p> <p>15 opening expert report? 6:28AM</p> <p>16 A I'm unaware of any specific errors at the</p> <p>17 moment.</p> <p>18 Q If you could open up the next exhibit,</p> <p>19 which is Exhibit 1351.</p> <p>20 (Whereupon, Exhibit 1351 was marked for 6:28AM</p> <p>21 identification.)</p> <p>22 BY MR. SMITH:</p> <p>23 Q Let me know when you have that open.</p> <p>24 A I do.</p> <p>25 Q Does this appear to be a complete and 6:29AM</p> <p style="text-align: right;">Page 11</p>	<p>1 But otherwise, it is the body of the 6:30AM</p> <p>2 report.</p> <p>3 Q Are you aware of any errors in your reply</p> <p>4 expert report?</p> <p>5 A I'm not aware of any specific errors at the 6:30AM</p> <p>6 moment.</p> <p>7 Q Just to be clear, with respect to all of</p> <p>8 these reports, are you aware of any errors in the</p> <p>9 appendices or exhibits to the reports?</p> <p>10 MR. KAPLAN: Object to form. 6:30AM</p> <p>11 THE WITNESS: I'm not aware of any</p> <p>12 specific errors in any of the documents that were</p> <p>13 served as part of my -- of my report.</p> <p>14 BY MR. SMITH:</p> <p>15 Q If we can turn to your opening report. 6:31AM</p> <p>16 Feel free to look at the paper copy or electronic,</p> <p>17 whatever is easier.</p> <p>18 I want to turn to Paragraph 6 and that's</p> <p>19 on Page 4.</p> <p>20 A Yes. 6:31AM</p> <p>21 Q This provides a summary of your opinions;</p> <p>22 is that correct?</p> <p>23 A It does provide a summary of my opinions,</p> <p>24 yes.</p> <p>25 Q And it's your opinion that the asserted 6:31AM</p> <p style="text-align: right;">Page 13</p>

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<p>1 claims of both the '885 patent and the '966 patent 6:32AM</p> <p>2 are invalid over the prior art based on three</p> <p>3 primary prior art systems; is that correct?</p> <p>4 MR. KAPLAN: Object to form.</p> <p>5 BY MR. SMITH: 6:32AM</p> <p>6 Q I'm referring to the 2005 Sonos system,</p> <p>7 the Squeezebox system and the Bose system.</p> <p>8 A There are various combinations that in my</p> <p>9 opinion either anticipate or render obvious the</p> <p>10 asserted claims. And any of them involved at least 6:33AM</p> <p>11 one of what I refer to as the primary systems, which</p> <p>12 would be the Sonos system, the Squeezebox system and</p> <p>13 the Bose system.</p> <p>14 Q With respect to the Sonos system, your</p> <p>15 opinion is based on obviousness; correct? 6:33AM</p> <p>16 A That is correct.</p> <p>17 Q And so you agree that the Sonos system</p> <p>18 does not anticipate the asserted claims of the '885</p> <p>19 patent or the '966 patent; correct?</p> <p>20 A The Sonos 2005 system does not anticipate 6:34AM</p> <p>21 the asserted claim of the two patents.</p> <p>22 Q So the Sonos 2005 system does not meet all</p> <p>23 of the elements of the asserted claims; is that</p> <p>24 correct?</p> <p>25 MR. KAPLAN: Object to form. 6:34AM</p> <p style="text-align: right;">Page 14</p>	<p>1 claim-by-claim basis to be certain, but that's my 6:36AM</p> <p>2 recollection.</p> <p>3 Q And so the Bose system, like the Sonos</p> <p>4 system, does not meet all elements of the asserted</p> <p>5 claims; is that correct? 6:36AM</p> <p>6 MR. KAPLAN: Object to form.</p> <p>7 THE WITNESS: As I said, I would have</p> <p>8 phrased it the way I did before. So I would say</p> <p>9 there is at least one limitation that's not</p> <p>10 completely satisfied by the disclosure in the Bose 6:36AM</p> <p>11 system for the asserted claim.</p> <p>12 BY MR. SMITH:</p> <p>13 Q And in this report, Dr. Schonfeld, you</p> <p>14 didn't provide an opinion based on invalidity under</p> <p>15 Section 101; is that correct? 6:36AM</p> <p>16 A The answer is correct. But let me just</p> <p>17 double check before I answer.</p> <p>18 I do not believe I included an argument</p> <p>19 based on Section 101 in this report.</p> <p>20 Q And you're also not challenging the 6:38AM</p> <p>21 asserted claims of the '885 patent or the '966</p> <p>22 patent under Section 112 for lacking written</p> <p>23 description; is that correct?</p> <p>24 A I'm going to say the same answer. I believe</p> <p>25 it's correct, but let me just as a matter of caution 6:38AM</p> <p style="text-align: right;">Page 16</p>
<p>1 THE WITNESS: I mean, we can go through it 6:34AM</p> <p>2 on a claim-by-claim basis. But my recollection is</p> <p>3 that at the very minimum, the general knowledge of a</p> <p>4 POSITA would be required based on the suggestion of</p> <p>5 the Sonos 2005 system for at least one limitation of 6:34AM</p> <p>6 the asserted claims.</p> <p>7 BY MR. SMITH:</p> <p>8 Q So just focusing on the Sonos 2005 system,</p> <p>9 it's missing at least one element of the asserted</p> <p>10 claims; is that correct? 6:35AM</p> <p>11 A I wouldn't phrase it this way. I would say</p> <p>12 that the Sonos 2005 system does not completely satisfy</p> <p>13 at least one limitation even if it may suggest it.</p> <p>14 Q Turning to the Squeezebox system, your</p> <p>15 opinion is based on both anticipation and 6:35AM</p> <p>16 obviousness; is that correct?</p> <p>17 A That's correct.</p> <p>18 Q With respect to the Bose system, your</p> <p>19 opinion is based only on obviousness; is that</p> <p>20 correct? 6:35AM</p> <p>21 A That's correct.</p> <p>22 Q So you agree that the Bose system does not</p> <p>23 anticipate the asserted claims of the '885 patent or</p> <p>24 the '966 patent; is that correct?</p> <p>25 A That's my recollection. We can take it on a 6:36AM</p> <p style="text-align: right;">Page 15</p>	<p>1 just go through and double check it. 6:38AM</p> <p>2 I do not challenge the 112 written</p> <p>3 description argument.</p> <p>4 I do point out, however, for example, in</p> <p>5 Paragraph 109 the ramifications of the court's 6:40AM</p> <p>6 finding with respect to written description on my</p> <p>7 invalidity analysis.</p> <p>8 Q But you're not challenging written</p> <p>9 description; is that correct?</p> <p>10 A No, I'm just simply pointing out the fact 6:40AM</p> <p>11 that the written description ruling under the court's</p> <p>12 order allows me to interpret the prior art under that</p> <p>13 understanding and that's what I did.</p> <p>14 Q Dr. Schonfeld, you understand that Sonos</p> <p>15 has asserted that the '885 and '966 patents are 6:41AM</p> <p>16 entitled to a priority date of September 12th, 2006;</p> <p>17 is that correct?</p> <p>18 A I don't remember the exact date, but it</p> <p>19 sounds right.</p> <p>20 Q And you're not challenging that Sonos is 6:41AM</p> <p>21 entitled to that priority date; is that correct?</p> <p>22 A Again, I'm going to say that the answer is</p> <p>23 correct, but let me just double check it out of an</p> <p>24 abundance of caution just to be sure.</p> <p>25 Q While you're checking that, can you also 6:41AM</p> <p style="text-align: right;">Page 17</p>

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<p>1 they are not operating in standalone mode. 7:31AM</p> <p>2 Q So it's your position that when a Sonos</p> <p>3 player or any player is not playing audio, it's not</p> <p>4 operating in standalone mode; is that your position?</p> <p>5 MR. KAPLAN: Object to form, compound. 7:32AM</p> <p>6 THE WITNESS: So in my opinion, when, for</p> <p>7 example, it's -- to be specific, if we take the '966</p> <p>8 patent, Claim 1, it states in Limitation -- I think</p> <p>9 it's IV is how everybody referred to it, it says,</p> <p>10 "wherein the first zone player is operating in 7:33AM</p> <p>11 standalone mode in which the first zone player is</p> <p>12 configured to play back media individually."</p> <p>13 So there is a requirement -- there is a</p> <p>14 requirement to operating in standalone mode and this</p> <p>15 happens -- and the requirement for it is that the 7:33AM</p> <p>16 zone -- the first zone player is configured to play</p> <p>17 back media individually.</p> <p>18 So if there is no operation of that</p> <p>19 particular zone player, it cannot in my view operate</p> <p>20 in a standalone mode. 7:33AM</p> <p>21 Moreover, it would -- according to the use</p> <p>22 of the claim language "configured to play back media</p> <p>23 individually," it would also not be configured to</p> <p>24 play back media individually because the way that</p> <p>25 phrase is used is to be configured in the context of 7:34AM</p> <p style="text-align: right;">Page 38</p>	<p>1 BY MR. SMITH: 7:35AM</p> <p>2 Q If it's not actively playing audio, is it</p> <p>3 operating in standalone mode?</p> <p>4 MR. KAPLAN: Object to form.</p> <p>5 THE WITNESS: If it's not actively playing 7:36AM</p> <p>6 audio, then in my opinion it's not configured to</p> <p>7 play media individually consistent with the use of</p> <p>8 the claim language throughout, for example, Claim 2.</p> <p>9 And moreover, it's not operating and</p> <p>10 therefore cannot be viewed as operating in 7:36AM</p> <p>11 standalone mode.</p> <p>12 BY MR. SMITH:</p> <p>13 Q So if a player is not playing audio, your</p> <p>14 opinion is that it's not operating at all?</p> <p>15 MR. KAPLAN: Object to form, 7:36AM</p> <p>16 mischaracterizes testimony.</p> <p>17 (Reporter clarification.)</p> <p>18 THE WITNESS: If it is not playing audio,</p> <p>19 it might be operating in a sense that it's on, but</p> <p>20 it's not operating in standalone mode. 7:37AM</p> <p>21 BY MR. SMITH:</p> <p>22 Q And so if a speaker is powered off, is it</p> <p>23 your opinion that that speaker is not operating in</p> <p>24 standalone mode?</p> <p>25 A If it's turned off? 7:37AM</p> <p style="text-align: right;">Page 40</p>
<p>1 the claim language, you actually have to be 7:34AM</p> <p>2 performing or operating in that mode.</p> <p>3 For example, if you look at Claim 2, it</p> <p>4 says that when you cease operation, you're no longer</p> <p>5 configured. In that case it's about the 7:34AM</p> <p>6 coordination for synchrony, but given the use of the</p> <p>7 word "configured" and the fact -- and how we see</p> <p>8 this continues throughout the claims, and the fact</p> <p>9 that this is only a requirement for operating in</p> <p>10 standalone mode, then it would be my view to 7:34AM</p> <p>11 determine -- to operate in standalone mode, you</p> <p>12 actually have to actively play.</p> <p>13 BY MR. SMITH:</p> <p>14 Q Okay. So to be operating in standalone</p> <p>15 mode in which a first zone player is configured to 7:35AM</p> <p>16 play back media individually, it's your opinion that</p> <p>17 the player has to actively be playing audio; is that</p> <p>18 correct?</p> <p>19 MR. KAPLAN: Object to form.</p> <p>20 THE WITNESS: It is my view that if the 7:35AM</p> <p>21 player is actively playing audio, then it is</p> <p>22 operating in standalone mode. And in that case,</p> <p>23 whatever the limitations are that follow from that</p> <p>24 in Claim 1 have to be satisfied while it's operating</p> <p>25 in standalone mode. 7:35AM</p> <p style="text-align: right;">Page 39</p>	<p>1 Q Yes. 7:37AM</p> <p>2 A Yes, if a speaker is turned off, it's not</p> <p>3 operating in standalone mode because if it's turned</p> <p>4 off, it's not operating.</p> <p>5 Moreover, it is not configured at that 7:37AM</p> <p>6 moment to play back media individually because, as I</p> <p>7 said, configured to play back media individually</p> <p>8 requires actually playing.</p> <p>9 So, for example, if you look at the last</p> <p>10 phrase of the abstract as an example, it states -- 7:38AM</p> <p>11 I'm just going to go directly to the end, causes the</p> <p>12 first zone scene to be invoked such that the first</p> <p>13 zone and the second zone become configured for</p> <p>14 synchronous playback of media.</p> <p>15 And this is echoed in the claim language 7:38AM</p> <p>16 itself as I pointed to earlier.</p> <p>17 Q Is this the interpretation of standalone</p> <p>18 mode that you applied in your invalidity analysis?</p> <p>19 MR. KAPLAN: Object to form, vague.</p> <p>20 THE WITNESS: That is the interpretation 7:39AM</p> <p>21 of the claims that I applied in my invalidity</p> <p>22 analysis.</p> <p>23 At times I may have made comments under my</p> <p>24 understanding of Sonos's interpretation. I believe,</p> <p>25 for example -- and I'm doing this -- we can talk 7:39AM</p> <p style="text-align: right;">Page 41</p>